



Alliance Telcom, Inc.

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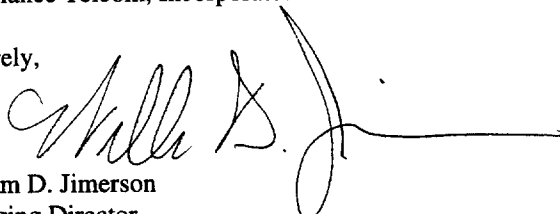
Ms. Donna R. Searcy
Secretary of The Federal Communications Commission
Room 222
1919 M St. N.W.
Washington, D.C. 20554

93-253

Dear Ms. Searcy:

Please find enclosed, one(1) original and nine(9) copies of the comments to the Auction NPRM, submitted by Alliance Telcom, Incorporated.

Sincerely,


William D. Jimerson
Managing Director

WDJ/kph

enclosures: 1 Original of Alliance Telcom, Inc. NPRM Reply Comments
9 Copies of Alliance Telcom, Inc. NPRM Reply Comments

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of

**Implementation of Sections 309(j)
of the Communications Act
Competitive Bidding**

)
) **Gen. Docket No. 93-253**
) **November 10, 1993**

**Comments on NPRM
and the Auction Process from)
Alliance Telcom, Inc.)**

POSITION PAPER

**The attached Position Paper has been prepared by and represents the position of
Alliance Telcom, Inc.**

1.0 Summary

Alliance Telcom, Inc. (the "Respondent") has reviewed the proposal of the Federal Communications Commission("FCC") regarding the rules for the 1994 auction of electromagnetic spectrum for Personal Communications Services("PCS"). Through a series of other filings in the Gen. Docket No. 90-314, the Respondent has advocated 20 MHz licenses, bidding preferences for selected groups, and sealed simultaneous bidding for combinatorial bidding on PCS spectrum. Upon review of the NPRM the respondent believes that the Commission has vindicated elements of its position and the position of the Small Business Advisory Committee which the Respondent supports.¹ Further, the Respondent proposes that the position is subject to further clarification as has been requested in the NPRM issued by the Commission.

Recommendation 1: (Auction Eligibility/Preferences)

The Respondent is in full support of the preferences assigned to small business, minority, women, and small businesses, so designated the "Preference" group. The Respondent recommends that the Commission further identify incentives to members of a "Special Preference" group to insure development of PCS systems on universal basis.² The financial barriers to entry of minority and women groups into PCS must be compensated for in the auction process. The Respondent recommends that the Commission defer the up front payments for the bidding process for Special Preference companies that meet certain guidelines as outlined in this response. The Respondent also recommends the use of tax certificates to provide incentives to the investment community to finance minority and women owned companies for the development of PCS. Further, the Commission should implement strict qualification rules that will prohibit false representation of Special Preference groups in the form of fronting by larger non-qualified entities. The Respondent supports the use of the SBAC guidelines for the definition of a minority firm and maintains that the voting ownership of the minority entity must remain in 51% control of the minority owner at least until one third of the market is built out(based on PoPs). Preference group entities should be eligible for "Innovator" incentives only if such company has demonstrated a historical presence and genuine dedication to the PCS industry. The Respondent herein proposes a "bright line" test to identify suitable entities that should be granted the innovator preference status.

¹See FCC Small Business Advisory Committee Report filed September 23, 1993

²See November 10th filing by CELSAT CORPORATION.

Recommendation 2: (Competitive Bidding Structure-Auction Process)

In concert with the Commissions desire to expedite the auction process, the Respondent recommends a simple auction process. The Commission should utilize oral sequential bids from largest market to smallest market, starting with the 2 MTA licensees. Further the Respondent recommends that the Commission allow sealed bids for combinatorial bidding. The commission should allow combinatorial bids for aggregation of a national license in each of the MTA bands and aggregation of regions and/or MTAs for the BTA band. Determination of the winner of the auctioned asset should be based on highest bid either sealed or oral.

Recommendation 3: (Financial Factors)

The Respondent identifies several factors in the auction process that will have direct impact on the financial effectiveness of the Commission's directive; Pre-auction application fees, deposits, timing of payments, moving fixed microwave operators, recognition of prior achievement, and recognition of historical exclusion of target groups from the wireless communications industry. The Respondent recommends that the commission identify financial incentives and structures that promote the success and viability of the 20 MHz PCS operator competing against the larger 30 MHz MTA operator. Considering that the two 30 MHz MTA licenses will likely be obtained by larger more financially stable entities, such as AT&T, MCI, GTE, and the RBOCs, the Commission must consider strong financial support mechanisms for the 20 MHz BTA band to insure standalone operation of a PCS network is economically feasible for the Preference group. It is not only important but a clear objective of the Omnibus Budget Reconciliation Act of 1993, that a minority, women, small business, or rural telephone company have a viable opportunity to compete in the PCS industry and be allowed to do so independently, as part of a consortium, or in alliance with a larger entity. Each operator must determine which is the most viable option for them but it is the task of the Commission to ensure that each option is available and is not precluded because of economical barriers such as extraordinarily high fees and/or deposits. The Respondent does not advocate the giving away of PCS spectrum to entities in the Preference group, instead, all payments should be reasonable in size and at significant discounts to those of the larger spectrum bidders. Further, all payments for PCS spectrum purchased by a member of the Special Preference group should be deferred out over a reasonable time period to allow the PCS operator to leverage the auction asset to acquire funding. A deferment structure is in order with the congressional mandate and preserves the integrity of the Commission's goal of universal service and universal opportunity to provide service. The Respondent's proposed structure is outlined in the following sections.

Recommendation 4: (FCC Directive- National Objectives)

In recognition of both the public policy goals of the Commission and specific objectives identified by Commissioner Barrett, the Respondent recommends³ : 1. The support of consortia of small, minority, women, and rural telephone companies to form bidding pools and develop operating, marketing and financial alliances to promote a seamless interoperable national service. 2. The Commission adopt incentives for the Preference and Special Preference groups that improve the competitive nature of the PCS market place. 3. The Commission adopt guidelines that prohibit and deter participation in the auction of PCS spectrum by those entities that desire undue enrichment and do not wish to promote the use of PCS spectrum for the public good.

³ "As a matter of public policy, the Commission has established four values for the structure of PCS services: 1. Competition in delivery of services; 2. speed of deployment; 3. universality of services; and 4. diversity of services. We have emphasized the need to furnish PCS providers with the ability to reach and serve existing and new markets in an economic and responsive manner....."After synthesizing these policy goals and analyzing the voluminous record, I established my own policy framework for asserting this PCS decision. My primary concerns are: 1. Spur significant competition to cellular by creating major opportunities for new players; 2. Increase competition on the local exchange areas; 3. Provide significant viable opportunities for wide-area PCS services; 4. Remain neutral on eligibility , and allow all companies to participate aggressively in PCS; 5. Provide significant opportunities for unlicensed data services; and 6. Provide viable, long-term opportunities for small businesses, minorities, women, and rural telephone companies to compete in the PCS market." See Dissenting Statement of Commissioner Andrew C. Barrett September 23, 1993, on file at Alliance Telcom, Inc." See "Dissenting Statement of Commissioner Andrew C. Barrett", September 23, 1993.

2.0 Auction Eligibility/Preferences

The Commission has identified several concerns in the set aside of PCS spectrum for designated groups, among those are the eligibility requirement which would be designed to protect the Preference group from illegal fronting but may also exclude historically underrepresented groups from competing in the PCS industry.⁴ There are several issues regarding the eligibility for the preference bands(Band C and D) for designated groups, among those issues are credibility and competitiveness.

2.1 Preference Group Designation and Qualifications:

The Respondent interprets that the public policy decision and intent of the law is to establish true opportunities for new business segments and new entrants in the area of wireless communications not simply based on who they are but more importantly because of the new and innovative service concepts that they bring to the existing market place as well as markets that are currently not served by the traditional carriers. In separate filings, the Respondent has supported wide deployment of PCS services to underprivileged communities in minority and rural areas. The Respondent further believes that the members of such communities may be better served by the Preference group operators who may take a vested interest in providing low cost wireless communications services in these areas. Moreover, many if not all of the underrepresented members of the Preference group, especially the minority component, historically have been excluded from direct participation in the wireless communications industry, and thus must be recognized, based on their performances elsewhere in the U.S. economy, and allowed to bring new, innovative and competitive concepts to the PCS market. This paradigm is not only in full accord with the constitutional rights of members of underrepresented groups but is essential for ubiquitous and innovative services in the U.S.

For an entity to be designated a member of the Preference group, in the spirit of ease of implementation and execution time, the Respondent recommends a "bright line" test or series of tests for each category of the Preference group. The Respondent supports the existing rule structures for minority and women owned enterprises and supports the SBAC Reports designation of rural and small businesses. More specifically, it is imperative that the integrity of the Preference group be maintained. The integrity may be measured by three factors: 1. Voting

⁴"In addition to concerns about set-asides raised in Chairman Dingell's letter, I also am concerned that we are "funneling" small businesses into an allocation where they may become sham operations for larger entities behind the scenes. If it is not clear they can compete on their own in this capital intensive business, I do not want to fool the public in this regard. See Dissenting Statement of Commissioner Andrew C. Barrett September 23, 1993, on file at Alliance Telcom, Inc.

control of the entity, 2. Financial control of the entity, and finally 3. Operational control of the entity.

The Respondent supports the 51% rule for voting control of the Preference group entity by the minority, women, small business or rural telephone concern. This structure will allow 49% voting control to be obtained by joint venture partners, venture capital firms, and other funding sources. The 51% rule should remain in effect until at least one-third of the entity's licensed PCS area is built out(based upon population) at which time the minority interest may exercise conversion rights or the outright buy out of the Preference group entity for 50% of the remaining 51% of the voting stock. At the time when 60% of the market has been built out, the minority interest holder may then exercise conversion rights or the outright buy out of 90% of the remaining 25% of the minority, women, small business, or rural telephone company stake. The remaining 3% may be converted or bought out when 100% of the market is built out.

Secondly, the Respondent recommends that the Preference group maintain a 20% financial interest in the PCS licensing entity until at least one- third of the entity's licensed PCS area is built out. As a minority owned PCS company, it has been the experience of the Respondent that the available funding for such a capital intensive business as PCS will require extreme financial flexibility. By allowing the Preference group entities to relinquish up to 80% of their financial control to investment entities, the Preference group entity will be assured a higher probability of finding a suitable funding source. 50% of the 20% financial control may be converted or bought out after 60% of the market is built out with the remaining 10% control protected until 100% of the market is built out.

2.2 Innovators Designation and Preference

The Respondent supports the Commission's acknowledgment of the contributions of innovators in PCS development. With over 100 companies performing over 200 experiments, it is evident that innovators have contributed significantly to the PCS definition and progress. The Respondent supports continued incentives and structures to promote innovators to continue to contribute and encourage significant technical, system, service, and architectural innovations. Based on the criteria outlined below, the Respondent recommends that the Commission institute additional "Innovator's Preferences" for Preference group entities that meet the additional criteria.

The Respondent maintains that many of the companies that have been instrumental in the development of PCS have done so with little to no financial reward or funding for expensive legal, lobbying , operational, or support costs. Many firms, like the Respondent, have contributed by utilizing the energies of its Principals and personnel that have invested their time and in many case a significant monetary component in the entrepreneurial spirit that the Commission, Congress, and the President has sought to preserve. The Respondent argues that

financial contribution, absent of personal contribution, should not be utilized to determine a company's commitment to the PCS industry.

The Respondent recommends that the Commission use a "bright line" that clearly identifies a company's contribution to PCS based upon documented FCC records in the form of ex parte filings, NPRM responses, or experimental license quarterly reports. The Respondent maintains that such documentation has been instrumental in aiding the Commission to develop the regulatory structure of PCS.

2.3 Definition of "Special Preference" Group Classification

The management team for the Special Preference entity must be representative of the Preference group category for which it is assigned. This factor is only applicable for the minority and women business category. This and other additional requirements are necessary for identifying groups of businesses that should be eligible for additional preferences in the auction process. The Respondent recommends that the Commission require that for an entity to maintain its minority or women owned status under the Special Preference group classification, it must meet all of the following requirements: 1. A member of the executive management team must (either designated as the President, C.E.O., Chief Operating Officer, Chief Financial Officer, or Chairman of the Board) be a member of the Special Preference group (i.e. for minority firms the chief officer of the firm must be a member of a minority group). 2. At least 30% of the entities management team must be represented by members of the Special Preference group. For example, a women owned entity must employ at least 30% of their management team as women. This representation may be counted in areas including general management, engineering, and finance.

2.4 Special Preference Group Eligibility for Deferred Payments

To qualify for the additional deferred payments, a company must: 1. Be a member of the Special Preference group. 2. In addition to the voting, financial, and operational guidelines applicable to the Special Preference group, the entity must maintain a simple majority stake in the company based on voting, financial, operational guidelines. The company should be allowed to relinquish more than a majority stake in any of the three areas but must immediately forfeit any extended deferred payment options and immediately pay the balance of the payments due. This option should apply to the application fees and the bid deposit. 3. The entity must supply the Commission with financial bona fides that support funding the entity for the balance of the deferred payment when due. These bona fides should be granted by approved financial institutions and be subject to confirmation at the desire of the Commission. If at any time a deferred payment option applicant is found to be in violation with any of the three criteria, that entity must immediately pay the balance of their payment due.

The Respondent supports the Commissions recommendation of the deferred payment of auction bids by the Preference group applicants only, with all other license entities paying the auction fees immediately upon receipt of the license. The Respondent also supports the use of up front application fees and 20% bid deposits for the Preference group. The Respondent recommends creation of additional eligibility rules that identify Special Preference entities for additional deferred payments of the up front fees until the applicant has won the bid for the license and has been effectively given an option on the license which is then leveragble to acquire funding from the investment community. Further, the Respondent feels that the obstacles of acquiring financial investment on a large scale is significantly anti-competitive to the PCS industry since it will inhibit and in some cases prohibit the ability of a Preference or Special Preference group entity to compete in the auction process. The important element to recognize is that the larger entities such as AT&T, GTE, MCI and the RBOCs have leveragble assets which make a \$1.4 million application fee(based on the \$.02 per MHz per PoP proposed) for the Miami BTA a insignificant amount. In the case of a small, minority or women owned business the ability to raise such capital before having the license on balance sheet may prohibit the inclusion of these entities in the PCS licensing process.

2.5 Special Preferenc Group Eligibility for Tax Certificates

The Respondent recommends that the Commission utilize tax certificates, as defined in the following section, for the Special Preference companies participating in the auction process. The guidelines for the use of tax certificates for minority owned companies in the field of communications have been defined and tested in their use with the cable television industry.

3.0 Competitive Bidding Structure-Auction Process

The Commission has identified multiple auction options that may be employed. The Respondent agrees with members of the Commission, as well as other Respondents, that the process should be clear and easy to implement.⁵ Though there may be more economically optimal auction structures, such as second highest price auctions, the Respondent recommends that the Commission employ a structure which utilizes highest bid, sequential bidding from largest to smallest market, and oral bidding. By employing such a structure the Commission can be assured that the rational bidders will place bids based on the net present value of the market and not collusive and predatory intentions. The basis price of the asset will clear the market reflecting its true economic value. Subsequent trades or open market sell off of the asset will be based upon added value created by the winner of the license and post license risk adjustment. Such an open paradigm applied with strict rules regarding "fronting" will eliminate the possibility of "unjust enrichment", since the true market value would have been paid in an open forum.

3.1 Bid Value and Bid Price Relationship

The auction should be designed so that the bid price of what is being sold is inherently related to the value of what is being sold. The bid price per POP by a designated entity will be based on several factors which include:

- 1. Market penetration and size.** This element goes to the idea of national branding which a larger more established entity clearly has an advantage over a new entrant. Further, because of the geographical limitations of the Preference group's 20 MHz BTA compared to the (2) 30 MHz MTAs, the new entrant may not be able to exploit economies of scale which would drive down the cost of capital per subscriber.
- 2. Capital efficiency.** This element is also size dependent and may also allow an existing entity to exploit economies of scope by utilizing existing infrastructure to keep cost of capital lower than that of the new entrant. Capital efficiency also relates to the cost of moving incumbent microwave users from the 20 MHz band⁶. For

⁵See National PCS Consortium Position paper for Gen. Docket 90-314 in August, 1993.

⁶"A simple calculation may make clear the cost to move the existing microwave users. If one selects Los Angeles as an example, and if one use the standard number that appears to be about 2, 000 links per Block A, B, or C and if one further reassures that the microwave users are moved to the 38 GHz bands, and that four 38 GHz links are required per exiting link, and that each 38 GHz link is \$10,000, then the cost for LA is \$80 million per frequency block. LA has about 20 million PoPs. so that the cost is \$4 per PoP to move the existing microwave users. Now if one assumes, further, that the microwave users are proportional to population density, that is in Boston that are one fifth of the links with one fifth of the population, then one concludes that the costs of moving microwave users is a fixed fee, independent of the market!" See Reply comments of Telmarc Telecommunications, Inc. for Gen. Docket 93-253 dated November 10, 1993. In

Preference group entities that desire to operate in rural or less attractive markets the cost of moving the microwave links alone may remove any competitive ability of the company to compete with larger entities.

3. Operating efficiency. The ability to provide a local service through a national service entity is imperative for the smaller new entrants to be successful. Herein resides the responsibility of the new entrant to exploit market alliances and develop new and innovative techniques for network management, billing, roaming, and customer service among other areas. Success will be based upon the innovative nature of the new entrant to be successful in this category and if the Commission employs an equitable structure in regards to the other areas, the new entrants in the Preference group band will have a true and viable means to become competitive in PCS.

4. "Auction Tax". The tax can be structured in the form of the up front fees required to bid on a particular property. Such a tax is under the control of the Commission and thus should be utilized to offset the effect of other elements of the cost structure for PCS new entrants. There are other elements that effect the net present value("NPV") of a PCS franchise, such as cost of capital and access fees that the Respondent will not comment on at this time.

3.2 Bid Value and the Auction Process

As identified above, there are several areas of the auction process that directly relate to the bid value of a potential PCS property. The Respondent recommends that the Commission exercise its regulatory control to effect equality in the value of the PCS licenses through efficient structuring of the auction process. More specifically, the Respondent maintains that the Commission should employ band limited bidding to insure that the Preference group bidders have an economically viable opportunity to participate in the PCS industry as an operator. Further, the Respondent maintains that the Commission should equalize the elements of the auction to compensate for the inability for new entrants to compete with larger and financially superior companies. Specifically, the Respondent recommends that the Commission adjust the cost of the "Auction Tax", which includes the up front application fee and the bid payment, to offset inefficiencies in the other cost elements of the PCS business. The Respondent maintains that such inefficiencies were created by the historical exclusion and under representation of certain groups from the wireless telecommunications industry. Further, such adjustments will promote the public policy goals of the Commission, Congress, and the President.

This analysis leads to the following observations:

some markets it would become economically infeasible to bid more than \$1 per PoP without any financial incentives that reduced other elements of market participation.

- *There is a clear advantage on the part of established larger companies in providing PCS on a broad basis, thus the Commission must employ an auction structure that offsets such advantages in order to obtain the public policy goal of universal service and inclusion on the part of minority, women owned, small business, and rural telephone companies.*
- *The Commission has the power to effect an equitable PCS market place by providing preferences to designated groups that do not have control over the majority of the cost elements of the PCS business.*
- *Fronting may lead to irrational bidding if a fronted entity is allowed to bring to bear the resources of larger more established entities and be afforded the preferences established for independent members of the Preference group.*
- *The Commission's proposed preference bid band for 20 MHz and 10 MHz BTA licenses will ensure the elimination of predatory practices of large companies directly on members of the Preference group. Further, the separate bid band should be augmented with other financial preferences that reduce the Auction Tax burden for the Special Preference group. This mechanism allows members of the Special Preference group to utilize their resources to improve the other cost elements of the PCS business structure. This structure should increase the bid value for the property and yield more long term revenue for the Special Preference entity and thus for the government in the form of deferred auction payments.*
- *Finally, if the Commission does not institute an auction structure that reduces the auction tax and increases the capital efficiency of the Special Preference group, the companies in the Special Preference group may not be able to successfully compete in PCS and thus not be able to pay any of the auction taxes to the government, thereby becoming economically and socially damaging to the public at large.*

Repectfully submitted,

Alliance Telcom, Inc.

November 10, 1993

By:

William D. Jimerson
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34 Woodbine Rd.
Pittsford, NY 15534

Dated: November 10, 1993